

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. DON HARMON

CO-CHAIR:
REP. TIM SCHMITZ

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SEN. PAMELA ALTHOFF
SEN. TONY MUÑOZ
SEN. SUE REZIN
SEN. DALE A. RIGHTER
SEN. IRA SILVERSTEIN
REP. GREG HARRIS
REP. LOU LANG
REP. DAVID R. LEITCH
REP. DONALD L. MOFFITT
REP. ANDRÉ THAPEDI

MINUTES

October 14, 2014

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on October 14, 2014 at 11:30 a.m. in Room 600C of the Michael A. Bilandic Building, Chicago, Illinois. Co-Chair Harmon called the meeting to order. Co-Chair Harmon announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings. Other persons are encouraged to submit their comments in writing.

ATTENDANCE ROLL CALL

X Senator Pamela Althoff	X Representative Greg Harris
X Senator Don Harmon	X Representative Lou Lang
Senator Tony Muñoz	X Representative David Leitch
X Senator Sue Rezin	X Representative Donald Moffitt
X Senator Dale Righter	X Representative Timothy Schmitz
X Senator Ira Silverstein	X Representative André Thapedi

APPROVAL OF THE MINUTES OF THE SEPTEMBER 16, 2014 MEETING

Senator Althoff moved, seconded by Representative Harris, that the minutes of the September 16, 2014 meeting be approved. The motion passed unanimously.

REVIEW OF AGENCY RULEMAKINGS

State Board of Education – Charter Schools (23 Ill. Adm. Code 650; 38 Ill. Reg. 11482)

Senator Rezin moved, seconded by Representative Lang, that JCAR recommend that the State Board of Education be more timely in updating its rules to reflect statute. SBE is implementing a portion of PA 97-152 that was effective 7/20/11 that codifies in rule information that authorizers are required to provide to SBE in charter school applications, renewals or revisions of the charter after approval. The motion passed unanimously.

Environmental Protection Agency – Collection of Out-of-Service Mercury Thermostats (35 Ill. Adm. Code 190; 38 Ill. Reg. 15811)

Senator Silverstein moved, seconded by Senator Righter, that JCAR and the Illinois Environmental Protection Agency agree to extend the Second Notice Period for this rulemaking for an additional 45 days to further consider public comment. The motion passed unanimously.

EXPEDITED CORRECTIONS

Department of Revenue – Regional Transportation Authority Retailers' Occupation Tax (86 Ill. Adm. Code 320; 38 Ill. Reg. 19295); Salem Civic Center Retailers' Occupation Tax (86 Ill. Adm. Code 690; 38 Ill. Reg. 19306); Non-Home Rule Municipal Retailers' Occupation Tax (86 Ill. Adm. Code 693; 38 Ill. Reg. 19317)

Representative Moffitt moved, seconded by Representative Leitch, that the Committee approve and certify the request of the Department of Revenue for the Expedited Corrections of the Rulemakings adopted in the 7/11/14 *Illinois Register*. The effective date of the correction is 6/25/14. The motion passed unanimously.

AGENCY RESPONSES

Department of Revenue – Home Rule County Retailers' Occupation Tax (86 Ill. Adm. Code 220; 38 Ill. Reg. 6549); Home Rule Municipal Retailers' Occupation Tax (86 Ill. Adm. Code 270; 38 Ill. Reg. 6562); Regional Transportation Authority Retailers' Occupation Tax (86 Ill. Adm. Code 320; 38 Ill. Reg. 6575); Metro East Mass Transit District Retailers' Occupation Tax (86 Ill. Adm. Code 370; 38 Ill. Reg. 6588); Metro-East Park and Recreation District Retailers' Occupation Tax (86 Ill. Adm. Code 395; 38 Ill. Reg. 6601); County Water Commission Retailers' Occupation Tax (86 Ill. Adm. Code 630; 38 Ill. Reg. 6614); Special County Retailers' Occupation Tax for Public Safety (86 Ill. Adm. Code 670; 38 Ill. Reg. 6627); Salem Civic Center Retailers' Occupation Tax (86 Ill. Adm. Code 690; 38 Ill. Reg. 6640); Non-Home Rule Municipal Retailers' Occupation Tax (86 Ill. Adm. Code 693; 38 Ill. Reg. 6653); County Motor Fuel Tax (86 Ill. Adm. Code 695; 38 Ill. Reg. 6666)

Due to the appropriateness of the agency's response, no further action was taken.

CONSIDERATION OF OTHER RULEMAKINGS

Illinois Commerce Commission – Governmental Electric Aggregation (83 Ill. Adm. Code 470; 37 Ill. Reg. 20544)

Representative Schmitz moved, seconded by Senator Althoff, that JCAR object to and prohibit this rulemaking. As currently drafted, he argued, this rulemaking gives a competitive advantage to one group of electrical suppliers over others engaged in the same regulated activity. JCAR believes that it was not the intent of the General Assembly to create an advantage for any specific group of the entities marketing electrical service in this State. JCAR finds this unbalanced policy poses a threat to the public interest.

Senator Harmon noted that this is a tactical rather than a substantive prohibition, hoped ICC understood that JCAR appreciated the work that had gone into this rulemaking so far, and urged ICC to continue working toward a satisfactory resolution of the issues surrounding this rulemaking.

PROHIBITION ROLL CALL

Y Senator Pamela Althoff
Y Senator Don Harmon
NV Senator Tony Muñoz
Y Senator Sue Rezin
Y Senator Dale Righter
Y Senator Ira Silverstein

Y Representative Greg Harris
Y Representative Lou Lang
Y Representative David Leitch
Y Representative Donald Moffitt
Y Representative Timothy Schmitz
Y Representative André Thapedi

11 voted yes.

Department of Natural Resources – Hydraulic Fracturing Regulatory Act (62 Ill. Adm. Code 245; 37 Ill. Reg. 18097); The Illinois Oil and Gas Act (62 Ill. Adm. Code 240; 37 Ill. Reg. 18081)

DNR Director Marc Miller was called to the table.

Representative Lang asked whether the process of fracking would be stopped by the absence of fracking rules. Director Miller replied that in the absence of rules DNR would not issue any fracking permits, but conceded that, since the Department could be forced by a court order to issue permits in the absence of rules, failing to adopt fracking rules would not stop fracking in Illinois. Representative Lang stated that although he remains opposed to fracking he believes it is better to regulate the industry than allow it to proceed without regulation. He expressed his displeasure at fellow fracking opponents who believed that they could stop fracking simply by being angry, and challenged opponents who have accused him and his fellow Committee members of conspiring behind closed doors to gut the rules governing fracking to furnish proof substantiating that allegation.

Senator Harmon asked whether, in the hypothetical case of an administration change that resulted in a DNR more sympathetic to industry concerns than environmental concerns, there was any assurance that fracking permits would not be issued in the absence of rules. Director Miller stated that no such assurance exists.

Senator Righter asked Director Miller whether it is true that the only way the Department would issue permits in the absence of rules is if a court order mandated this. Director Miller confirmed that this was the case.

Senator Righter questioned the rule's criteria governing who would have standing to make a claim that a fracking permit had an adverse effect on them; in particular, he wondered where the line between a valid claim and a frivolous claim would be. Director Miller assured him that DNR's hearing officers would have the jurisdiction to reject as frivolous any claims that were unacceptably weak and that adopting clear standards for evaluating these claims would be overly prescriptive on a matter best left to professional judgment. Senator Righter expressed his concerns at the regulatory minefield that would be created for businesses attempting to follow the law but whose legal advisors would be unable to provide clear-cut advice because of the vagueness of the rule's criteria. He said that although differences existed on precisely how fracking should be regulated, it should go without saying that any regulation done should be conducted with exacting clarity, and worried that the current rule failed to do so.

The rule will be taken up again at the Committee's November meeting.

CERTIFICATION OF NO OBJECTION

Senator Rezin moved, seconded by Representative Harris, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection or an Extension, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based upon the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued. The motion passed unanimously, with Representative Lang casting a present vote on three rulemakings (Department of Healthcare and Family Services – Specialized Health Care Delivery Systems (89 Ill. Adm. Code 146; 38 Ill. Reg. 14779); Reimbursement for Nursing Costs for Geriatric Facilities (89 Ill. Adm. Code 147; 38 Ill. Reg. 14781); Long Term Care Reimbursement Changes (89 Ill. Adm. Code 153; 38 Ill. Reg. 14802)).

NOVEMBER MEETING DATE

Co-Chair Harmon announced that the next monthly meeting of JCAR is scheduled for Thursday, November 6, at 11:30 a.m., Room 600C, Michael A. Bilandic Building, Chicago IL.

ADJOURNMENT

Senator Althoff moved, seconded by Representative Moffitt, that the meeting stand adjourned. The motion passed unanimously.

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